

SUPREME COURT OF NIGERIA
10TH MARCH, 1995.57XSC. 168/1992
CORAM:- M.L. UWAI, S.M.A. BELGORE,
A.B. WALI, I.L. KUTIGI, M.E. OGUNDARE,
Y.O. ADIO, A.I. IGUH, JJSC.

PRINCE YAYA ADIGUN & 2 OTHERS
(For themselves and on behalf ofAPPELLANTS
Ogunmakinde Ande Ruling House of Iwo)

AND

THE GOVERNOR OF OSUN STATE RESPONDENTS
& 17 OTHERS

APPEALS - *Concurrent findings - Supreme Court will not readily interfere - Where appellants did not attack any of the findings - Whether they will stand undisturbed.*

JURISDICTION - *Res judicata - Where the plea is established - The courts lack jurisdiction - To adjudicate on the claims.*

RES JUDICATA - *Sameness of parties, etc - Is a question of fact - Elements of res judicata - Found by the two lower courts - To be same in previous and present case.*

RES JUDICATA - *Estoppel per rent judicata - Plea thereof by the respondents - Whether established.*

SUPREME COURT - *Finality of its decision - In civil proceedings - Is absolute save set aside by later legislation.*

FACTS

The appellants as plaintiffs filed this action before the Oshogbo High Court now in Osun State for themselves and on behalf of the Ogunmakinde Ande Ruling House. Appellants sought for several declarations and an injunction against the respondents. The germane of the appellants' claim is a declaration that their Ogunmakinde Ande family is the only Ruling House in Iwo from which the Oluwo of Iwo Chieftaincy is to be

appointed, by virtue of the prevailing customary law. This same issue has been litigated upon by the appellants up to the Supreme Court in Suit No. SC.98/1986. The respondents raised the plea of estoppel per rem judicata.

The trial court found in favour of the respondents on the view that there must be an end to litigation. Appellants' appeal to the Court of Appeal was dismissed as that court confirmed the trial court's ruling that the plea of res judicata succeeded. Being dissatisfied, appellants have further appealed to the Supreme Court to determine inter alia, whether the plea of res judicata can be sustained in the circumstances of this case.

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIS JSC**)

Res judicata - Sameness of parties, etc

1. It is, therefore, a question of fact whether the parties and their privies, the facts in issue and the subject matter of the claim are the same with those in the current suit. The learned trial judge in the present case carefully performed this exercise and came to the conclusion that all those elements of Adigun v. Attorney-General of Oyo State & 18 Ors. (1987) 1 N.W.L.R. (Part 53) 678 are the same with those in the present case. The Court of Appeal also found the same and thereby agreed with the findings of the learned trial judge. (P.687H)

Appellants did not attack any of the concurrent findings

2. Hence concurrent findings of facts have been made. It is trite that in a situation such as this, this Court will not readily interfere with the findings made by the lower courts unless there is some miscarriage of justice or the violation of some principles of law or procedure. The appellants have not attacked any of the findings; and so they stand undisturbed and section 54 of the Evidence Act, Cap. 112 applies. (P. 688B)

Res judicata plea - Whether established

3. Similarly, there can be no doubt that the judgment of this Court in Adigun v. The Attorney-General of Oyo State & 18 Ors. (1987) 1 N.W.L.R. (Part 53) 678 is final and that this Court was competent to make the decision, as Adigun v. Attorney-General of Oyo State & 18 Ors.. (No. 2). (1987) 2 N.W.L.R. (Part 56) 197 so confirmed. Therefore, the plea of estoppel per rem judicatam, as found by the lower courts, has been estab

lished. The Appellants are barred from bringing this action. (P.688C)

Jurisdiction Res judicata

4. It follows, therefore, that the trial court and by extension the Court of Appeal as well as this Court have no jurisdiction to adjudicate on the claims brought by the Appellants in the present case. Consequently this knocks the bottom off this appeal. (P. 689B)

Supreme Court - Finality of its decision

5. The finality of the decisions of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation. The Justices that man the Court are of course fallible but their judgments are, as the Constitution intends, infallible. Therefore any ingenuous attempt by counsel to set aside or circumvent the decision of the Supreme Court will be met with stiff resistance. That is indeed the point, which has been brought out by the twists and turns, in this case. (P. 690A)

NOTABLE POINTS OF INTEREST

UWAIS JSC

1. Plea of estoppel per rem judicatam - Duty of trial court

When a plea of estoppel per rem judicatam is raised, it is the duty of the trial court to examine the judgment relied upon and say whether it decided the issue pleaded. Similarly, it is legitimate for the trial judge to make such an inquiry in order to determine the fundamental basis of the judgment. (P.687G)

2. When presence of new party would not affect plea of res judicata

The 18th Respondent was joined according to the Appellants' brief of argument on the ground that "*if the decision of the Court of Appeal affirming the High Court decision which dismissed the Appellants' claims, is overturned or set aside, the irresistible follow up is on the propriety of the appointment of Ashiru Olatunbosun Tadesse, hence his joinder as 18th Respondent.*" There is no claim against him in the suit in the High Court. He is not, therefore, a party in the action. His presence in the case in this Court could not have affected the plea of estoppel per rem judicatam in the High Court. His name is hereby struck out from the appeal. (P. 689D)

BELGORE JSC

3. Classical example of frivolous and vexatious litigation

I find this matter to be a classical example of frivolous and vexatious litigation. After the case travelled all the way to this court, an attempt was made to get this court to change its decision under the cloak of employment of “inherent jurisdiction Obaseki, JSC, set out clearly in concluding, the possible consequence of acceding to such illegality as setting ourselves aside. Undeterred, the appellants initiated new proceedings on the same matter just as a gambler would do. (P. 690F)

WALI JSC

4. Conditions under which res judicata will apply

The rule of res judicata will apply when the following conditions are satisfied:-

1. The parties or their privies are the same
2. The facts in issue in both the previous litigation and the present one are the same
3. The decision relied upon to support the estoppel per rem judicatam must be final,
4. The court giving the decision has jurisdiction to do so. These conditions have been satisfied in this case and the rule applies. (P. 693C)

ADIO JSC

5. View of Supreme Court - Not usurpation of chieftaincy committee

The view or determination of this court stated in paragraph (10) of the order in response to the issue raised or claim made by the appellants, the direction that an inquiry should be held to ascertain the customary law of Iwo regulating the appointment of an Oluwo of Iwo, and the expression of the view that the Ogunmakinde Ande Ruling House and others should be given an opportunity of being heard at such an inquiry, cannot be reasonably said to be a marginalisation of the chieftaincy committee or the usurpation of the functions of the chieftaincy committee. (P. 700F)

REPRESENTATION

Chief Afe Babalola, SAN with L.O. Fagbemi and T. Lamuye for the Appellants.

Alhaji Y. A. Agbaje, SAN with A. Agbaje for the 3rd Respondent.

E. Abiodun for the 18th Respondent.

B

1st, 2nd, 4th - 17 Respondents unrepresented.

CASES REFERRED TO

Adigun & 2 Ors. v. The Attorney-General of Oyo State & 18 Ors. (1987) C (Pt. 53) 678.

Ashiyambi v. Adeniyi (1967) 1 All NLR 83

Minister of Lagos Affairs, Mines and Power & Anor. v. Olugbade & Ors. (1974) 11 SC. 11

Adeoye v. Jinadu (1975) 5 SC. 43 at P. 47.

D

Alase v. Olori-Ilu (1965) NMLR 66 at P. 67.

Madukolu & Ors. v. Nkemdilem (1962) 1 All NLR 587 at 599.

Henderson v. Henderson (1843) Hart 100 at P. 115.

Fadiora v. Gbadebo (1987) 3 SC. 219 at pp. 288-221.

Odjevmedje & Anor. v. Echanokpe (1987) 3 SC. 47 at pp. 98-99.

E

Cardoso v. Daniel (1986) 2 NWLR (Pt. 20) 1 at pp. 16C, 17B-C and 18H.

Oduka & Ors. v. Kasumu, (1968) NMLR 28 at p. 34.

Board of Custom & Excise v. Kalu (1965) All NLR 393; 1965 NSCC 307.

Asagba & Anor. v. Ogaje & Anor. (1972) 11 SC. 139 at p. 156.

Omota v. Numa 11 NLR 18

F

Odadhe v. Okujani (1973) 11 SC. 343 at p. 353

Basil v. Monger 14 W.A.C.A. 569 at p. 572

Morrison Rose and Partners v. Hillman (1961) 2 Q.B. 266 at p. 277

Eguamwense v. Amaghizenwen (1994) 1 KLR 1

Yoye v. Olubode & Ors. (1974) 1 All NLR (Pt. 2) 118 at 122

G

Savage & Others v. Uwaochia (1972) 1 All NLR P. 251 at P. 257-260.

STATUTES AND RULE REFERRED TO

Supreme Court Rules 1985 O 8 r 16

H

Evidence Act, Cap. 1, 12, Laws of the Federation of Nigeria, 1990 S.54

Constitution of the Federal Republic of Nigeria 1979 S. 215.

LEAD JUDGMENT BY UWAIS JSC

The facts of this case are inextricably interwoven with those of *Adigun & 2 Ors. v. The Attorney-General of Oyo State & 18 Ors.*, (1987) 1 NWLR (Pt. 53) 678 and *Adigun & 2 Ors. v. The Attorney-General/of Oyo State & 18 Ors. (No.2)*, (1987) 2 NWLR (Pt. 56) 197; both of which were decided by this court as a full court, (Obaseki, Eso, Nnamani, Coker, Karibi-Whyte, Kawu and Oputa, J.J.S.C.): The narration of the facts may be follows.

By the Iwo Local Government (Appointment of Chieftaincy Committee) Order, 1978, Oyo State Legal Notice No. 30 of 1978, members of the Chieftaincy Committee of Iwo Local Government were appointed with effect from the 3rd day of May, 1978. The Committee which was vested with the powers to discharge the duties conferred on such a committee by the Chiefs Law, Cap. 19 of the Laws of Western Nigeria, 1959 (now Cap. 21 of the Laws of Oyo State, 1978, applicable to Osun State), consisted of the holders of the following chieftaincy titles -

1. Oluwo of Iwo as Chairman
2. Bale of Ile-Igbo
3. Bale of Oluponna
4. Bale of Kuta
5. Bale of Ikonifin
6. Bale of Ogbagba

Thereafter steps were taken by the Government of Oyo State to ascertain the customary law governing the appointment of the Oluwo of Iwo in Iwo Town. The Chieftaincy Committee made a Declaration of the appropriate customary law on the 4th day of January, 1979, which was approved on the 17th day of July, 1979 by the then Military Administrator of Oyo State and was registered on the 19th day of July, 1979. In the Declaration, only one Ruling House, namely that of Ogunmakinde was identified and declared as being in existence. This provoked a spate of protest and petitions which were sent to the office of the Governor of the State. As a result, the Government of Oyo State appointed one Dr. Agiri as sole Commissioner, to carry out discreet investigation into the chieftaincy and present a report for the consideration of the Government. The assignment was carried out. On the Report being submitted to the Government a new Declaration of the customary law regulating the selection to the Oluwo of Iwo Chieftaincy (Exhibit P2) was made by the Governor of the State under S. 19A of the Chieftaincy Law, Cap. 19. The Declaration was signed by the Governor of Oyo State on the 28th day of July, 1981. It was registered on the following day - the 29th day of July, 1981. Three Ruling

Houses were identified in the Declaration. These are -

1. Alawusa
2. Adagunodo
3. Gbase

The Ruling House of Ogunmakinde Ande was not included in the Declaration on the ground that the family of Ogunmakinde Ande is a branch B of Alawusa Ruling House. On this account, the Appellants herein decided to challenge the Declaration in court. They filed, an action in the High Court of Oyo State, holden at Oshogbo.

They endorsed the writ of summons with the following claims -

"The plaintiffs claim against the defendants jointly and severally:- C

- (1) a declaration that (under) the customary law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which appointment to the Oluwo of Iwo Chieftaincy is to be made.*
- (2) a declaration that the instrument dated the 28th day of July, 1981 is in so far as it purports to declare the customary law prevailing in Iwo with D respect to the Oluwo of Iwo chieftaincy, is wrong and accordingly illegal and void.*
- (3) an injunction restraining all servants, officers and agents of the Government of Oyo State or the Iwo Central Local Government from acting pursuant to or taking any steps to implement the aforesaid declaration regis- E tered on the 29th July, 1981."*

The case was decided by the High Court. It went to the Court of Appeal and eventually came to this Court as Suit No. Sc. 98/1986. It is the judgment of this Court in the case that is reported in (1987) 1 NWLR (Pt. 53) 678. In the lead judgment of the court, Obaseki J.S.C. with whom all F the justices of the full court agreed, concluded thus:-

"The appeal succeeds on the dismissal of claim No. (2) but fails in respect of the dismissal of claims (1). It is desirable that the appellants, i.e. Ogunmakinde Ruling House along with others be heard in an inquiry to ascertain the relevant customary law. The decision of the Court of Appeal G is hereby set aside and in its stead. I hereby order that -

(1) Claim 1 be dismissed; Ogunmakinde Ande has not been proved to be the only Ruling House at Iwo from which Oluwo of Iwo is appointed under the customary law of Iwo.

(2) Claims 2 and 3 be granted.

Therefore, the Declaration of the customary law of Iwo regulating the ap- H pointment of Olowu of Iwo contained in Exhibit K, is hereby declared null and void.

A proper inquiry to be the basis of a new and proper declaration

should be set in motion so that the stool vacancy can be filled with a minimum of delay. The appellants are entitled to costs assessed at N300.00."

Not satisfied with this decision, the appellants herein brought an application before the full court purportedly under the inherent jurisdiction of the Supreme Court praying for the following order:-

B *"(1) that notwithstanding the provisions of Order 8 Rule 16 of the Supreme Court Rules, 1985, this Honourable Court shall entertain the prayers contained in paragraph (ii) of this Motion on Notice.*

(2) that the judgments delivered by the Justices of this Honourable Court on the 20th day of March 1987 be amended to read as if -

C *(a) the decision to dismiss the first claim of the plaintiffs, (i.e. the claim for declaration that by the customary law prevailing in Iwo, the Ogunmakeinde Ande Ruling House is the only Ruling House from which appointment to the Oluwo of Iwo Chieftaincy is to be made) were deleted and that there should be substituted therefore a decision granting the said*

D *declaration.*

(b) all references to orders (in the nature of mandatory or prohibitory injunction or of mandamus or otherwise howsoever) not included among the relief's claimed by the plaintiffs and directed against the said plaintiffs or directed against any of the other parties to the action were deleted from

E *the said judgments.*

(3) Such further or other orders as the Honourable Court may deem fit to make."

The application was heard and the ruling of the Court was delivered on the 14th day of April, 1987. The application was unanimously
F dismissed by the full court without any reservation. It is the ruling that is reported in (1987) 2 NWLR (Pt. 56) 197. In expressing his indignation with the application, Obaseki, J.S.C. made the following remarks on p. 212 thereof -

G *"I would, in conclusion, observe that this Court has in several cases refused to exercise its inherent powers to review its decisions and this is not the first occasion that such application as this is coming before it. Mention maybe made of -*

(1) Ashiyanbi v. Adeniji, (1967) 1 All NLR 82.

H *(2) Minister of Lagos Affairs, Mines and Power & Anor v. Akin Olugbade & Ors. (1974) 11 SC. 11.*

(3) Chief Iro Ogbu & Ors. v. Chief Ogburu Urum (1981) 4 SC. 1,

(4) John Chukwuka & Ors v. N.G. Ezulike, (1986) 5 NWLR (Pt. 45) 892.

(5) Oba Jacob Oyeyipo v. Chief J.O. Oyinloye (1987) 1 NWLR (Pt. 50) 356.

This does not mean that when a proper case comes before the

Court in which the Court is satisfied that the matters sought to be amended can be amended within the provisions of the law, it will not exercise its inherent powers. But it will be scandalous and suspect of improper and corrupt motives, if the Court, after delivering a well considered judgment, Reserved for about three months, were to be allowed to turn round and deliver a different decision. I have no doubt that such conduct will mark the B onset of the erosion or confidence in the integrity of the Court and the destruction of the Courts competence to do justice. It will be the death of justice which the Courts are established to administer. It was for the above reasons that I dismissed the application on the 6th day of April, 1987."

Still undeterred, like an incorrigible child, the appellants herein C brought a fresh action in the High Court of Osun State, at Oshogbo, on the 22nd day of February, 1988, which is the present case on appeal. In the fresh action the 3 appellants are the same as the plaintiffs/appellants in case No. SC.98/1986 except that this time they specifically indicate that they brought the action on behalf of themselves and the Ogunmakinde D Ande Ruling House. The defendants in the present case are substantially the same as those in Suit No. SC.98/1986, the only difference being, that the 1st respondent, that is the Military Governor of Oyo State, was added, while the 3rd and 4th respondents in Suit No. SC.98/1986, that is Chief Adiatu Amao and Gbadamosi Adio, were not included. The new claims E are as follows:-

"(i) Declaration that in the absence of the Oluwo of Iwo, no new declaration of custom regulating the succession to the Oluwo of Iwo Chieftaincy can be made.

(ii) Declaration that until new Declaration regulating the succession to Oluwo of Iwo Chieftaincy has been made, the Ogunmakinde Ande Ruling House in accordance with the customary law applying to that Chieftaincy is the only Ruling House to present a candidate for the Oluwo of Iwo.

(iii) Declaration that the right of Ogunmakinde Ande to present a candidate for the vacant stool of Oluwo of Iwo had accrued since the judgment of the Supreme Court on 20th March, 1987, which invalidated both the declaration of 4th January, 1979 and that of 28th July, 1981.

(iv) Declaration that any action of the Defendant jointly and severally that takes or purports to take away the accrued right of Ogunmakinde Ande Ruling House is unconstitutional being retroactive in effect.

(v) Injunction restraining the defendants jointly and severally by their offic-

ers, servants and or agents and howsoever from seeking any step whatsoever which may directly or indirectly affect the accrued right of the plaintiffs and or from appointing or causing an appointment of a candidate or candidates from any family other than the Ogunmakinde Ande Ruling House.

- B *(vi) Declaration that after the judgment of the Supreme Court in Suit No. SC.98/1986 of 20/3/87 nullifying the registered declaration of 4th January, 1979 and 28th July, 1981 the Ogunmakinde Ande Ruling House automatically became the only Ruling House in accordance with the Customary Law applying to the Oluwo of Iwo Chieftaincy with accrued right to present*
 C *a candidate for the Oluwo of Iwo Chieftaincy."*

The case was heard in the High Court by the learned trial Judge (Popoola J.) who dismissed the claims in their entirety on the ground "that there must be an end to litigation." The appellants appealed against the decision to the Court of Appeal and lost there too. They next appealed to this Court from the decision of the Court of Appeal.

Whilst the appeal was pending in this Court, Oyo State became split into Oyo and Osun States in 1991. Also a new Declaration of the customary law regulating the Chieftaincy of Oluwo of Iwo was made following the dismissal of the action by the High Court and a new Oluwo of Iwo was appointed in the person of the 18th respondent to this appeal. The appellants, therefore, applied to this Court by motion on notice for the Military Governor of Oyo State and the Attorney-General and Commissioner for Justice of Oyo State to be substituted with the Governor of Osun State and the Attorney-General and Commissioner for Justice of Osun State. Also for the 18th respondent - Ashiru Olatunbosun, Tadese, to be joined as respondent to the appeal. The application was heard (Karibi-Whyte, Belgore, Olatawura, Mohammed and Onu, J.J.S.C.) on the 20th day of September, 1993 and was granted as prayer. Hence the present parties to the appeal.

The following issues for determination have been formulated by the appellants

- H *"1. Whether upon a true and proper interpretation of the order of the Supreme Court in SC.96/1986, directing "a proper inquiry" to form the basis of a new and proper declaration to fill the vacant stool of Oluwo of Iwo, it can be rightly said that the Supreme Court contemplated a new declaration outside the provisions of the Chiefs Law of Oyo State applicable in Osun State?"*

2. *If the answer to (1) is in the affirmative, is the order in question valid in law under the 1979 Constitution?*
3. *If the said order is invalid on the ground that it is unconstitutional, will it nonetheless support a plea of res judicata coming as it were from the highest court of the land and is not appealable?*
4. *Whether in any event i.e, notwithstanding or apart from issue 3 above, a B plea of res judicata can be sustained?*
5. *Whether or Not the appellants are entitled to succeed on their claim (1), namely "A Declaration that in the absence of an Oluwo of Iwo no new declaration of custom regulating the succession of the Oluwo Chieftaincy can be made, having regard, ipso facto, to the finding of the Court of C Appeal, as per the lead judgment of Ogwuegbu J.C.A. as he then was, that it would have been impracticable for the then Government of Oyo State (now Osun State) to hold an inquiry and make a new declaration under the Chiefs law as regards succession to the Oluwo of Iwo Chieftaincy title" since the Oluwo of Iwo who is the Chairman of the Chieftaincy Committee D of Iwo Local Government cannot be there as the stool is vacant?*
6. *In the event of the impracticability, within the provisions of the Chiefs Law, of carrying out the order of the Supreme Court directing an inquiry and a new Chieftaincy declaration to fill the vacant stool of Oluwo of Iwo, is it not incumbent upon the then Government of Oyo State (now Osun E State Government) to fill the vacancy by reference to the provisions of the Chiefs Law, which have adequately taken care of the situation arising from the Supreme Court judgment setting aside all previous declarations in respect of the Chieftaincy, that is to; say, to fill the vacancy by reference to Section 36(1) (a) of the Chiefs Law applicable to Osun State? F*
7. *Whether the customary law applicable to Oluwo of Iwo Chieftaincy title is sufficiently discernible from the admitted facts in the case for one to rightly say that the then Government of Oyo State (now Osun State) ought to fill by reference to Section 36(1) (a) of the Chiefs Law, the vacant stool of Oluwo of Iwo from Ogunmakinde Ande Ruling House, consistently with G the decision in SC.96/1986 that, that ruling house is not the only ruling house to fill the stool?*
8. *Whether any of the steps taken by the then Government of Oyo State (now Osun State) pursuant to the order of the Supreme Court in question in SC.96/1986 in the matter of the selection and appointment of Oluwo of H Iwo was valid?*
9. *If all the steps referred to in issue 8 are invalid whether or not they should be set aside?"*

As there are 3 sets of respondents to the appeal, three sets of respondents' briefs of argument have been filed. In the brief of the 1st, 2nd, 4th to 17th respondents, who constitute the first set, three issues have been raised for determination. These are -

- B *"(i) Whether the appellants' claims (ii) -(iv) before the trial Court, as stated in paragraph 1.02 above, were caught by the legal principle of estoppel per rem judicata". '

 - (ii) Whether the chieftaincy declaration can be made during an interregnum.*
- C *(iii) Whether the appellants have any accrued right to the Oluwo of Iwo Chieftaincy with effect from 26/3/87 when the Supreme Court delivered its Judgment contained in Exhibit D2."*

The 3rd respondent stands alone and he constitutes the 2nd set.

- D Only one issue for determination has been raised in his brief of argument and it reads -

"Whether the appellants are estopped by the judgment of the Supreme Court."

E

The 18th appellant constitutes the 3rd set. The following issues have been formulated in his brief of argument -

- F *"4.1 Whether or not the Court of Appeal in part of its reasons for dismissing the appellants' appeal and affirming the judgment of the High Court was right in its remark that the Government was not obliged to comply with Chiefs Laws and that it would be impracticable to do so?"*

- G *4.2 If the answer to the first issue is in the negative then, whether or not the appellants have shown that the error has led to a miscarriage of justice?"*

- H *4.3 Whether or not the Supreme Court in Exhibit D2 recognised any vested right in the appellants under customary law to enable them fill the vacant stool of Oluwo of Iwo ever before the Order of the Supreme Court in the said exhibit was fully implemented or in the alternative whether or not the Supreme Court judgment in exhibit D2 envisaged the filling of the vacant stool of Oluwo of Iwo before the customary law regulating the succession to the stool of Oluwo of Iwo chieftaincy was ascertained.*

4.4 Whether or not the claim of the appellants in the proceedings is caught

by the doctrine of estoppel per rem judicatam or is the claim another attempt to circumvent the judgment of the Supreme Court in exhibit D2."

As can be seen from the foregoing the issue of estoppel per rem judicatam is a common thread running through the issues formulated by the appellants and the respondents. As the issue is not only crucial but also fundamental, it behoves us to consider it first.

The plea of estoppel per rem judicatam was raised by the 1st and 2nd sets of respondents in their statements of defence before the High Court. The learned trial Judge found as follows:-

"On a careful study of the pleadings filed in the present suit and on a meticulous examination of the evidence led thereon by the 2nd plaintiff C and his witness, Tiamiyu Ajani, it has become glaringly obvious to me that the issue which also call for determination in considering the plaintiffs' Reliefs contained not only in plaintiffs' claims (ii) - (iv) but also in their claim in this suit is the same issue, namely:

Whether the plaintiffs' Family; that is Ogunmakinde Ande, is the only Ruling House in Iwo entitled to the Oluwo Chieftaincy - which issue had been previously raised by these same plaintiffs in HOS/15/1982 (Exhibit "D1") and finally determined by the Supreme Court in Exhibit "D2". I therefore hold that the issue raised on the pleadings for determination in this present suit is the same issue which had been finally determined by the Supreme Court, that the plaintiffs have cleverly split into Six Claims in this suit. Therefore as Claims (i) - (vi) are basically the same claim I already dismissed by the Supreme Court in Exhibit "D2", it will amount to allowing the plaintiff to "have a second bite at the cherry" if their' claims in this suit F are entertained by this Court: See (1) Albert Adeoye v. Madam Jinadu, (1975) 5 Sc. 43 at p. 47; (2) Savage & Ors. v. Uwechta (1972) 1 All NLR 251 at pp. 257 - 260; and (3) Madukolu v. Nkemdilim (1962) 1 All NLR 587 atp. 593 (1962) 2 SCNLR 341.

For all the foregoing reasons I hold that all the Reliefs claimed by the plaintiffs in this Suit have been caught by the doctrines of "estoppel per remjudicatam" and "issue estoppel" and for that reason the plaintiffs are estoppel from re-litigating and claiming the reliefs sought in this suit against the Defendants."

In considering the same issue, the Court of Appeal (Ogwuegbu, J.C.A., as he then was, Akpabio and, Agoro J.J.C.A.) also held as follows (per the lead judgment of Ogwuegbu, J.C.A., as he then was):-

"The final issue is the sixth, namely, whether the judgment contained in Exhibit "D2" is a bar to any of the reliefs being sought by the appellants...

In the case of Idowu Alase v. Sanya Olori-Ilu, supra, (1965) NMLR 66 at p. 67 it was held that the following criteria should be satisfied before the doctrine of estoppel per remjudicatam is to apply: it must be shown that the parties (their privies), the issues and the subject matter are the same in the previous action as those in the action in which the plea is raised. Further requirements are that: it must be established that the judicial tribunal pronouncing the decision had competent jurisdiction in the matter. See Madukolu & Ors. v. Nkemdilem, supra - (1962) 1 All NLR 587 at p. 599 (1962) 2 SCNLR 341. It must be established that the judicial decision is final.

As to the subject matter, it goes without saying that Claim 1 in Suit No HOS/15/82 is split into six in the present action. One needs read the reliefs in both suits to me to a quick conclusion on this. In Suit No. HOS/15/82 which terminated in "Exhibit D2", Claim 1 was declaration that by the customary law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only ruling House from which appointment to the Oluwo of Iwo Chieftaincy is to be made.

Claims (ii) - (vi) of the present suits even though they were couched in different ways, the appellants are still saying that their Ruling House is the only Ruling House to present a candidate for the vacant stool of Oluwo of Iwo.

Claim 1 in the present suit is an attempt to stop the implementation of the order made by the Supreme Court in Exhibit "D2". There is no appeal against the said judgment of the Supreme Court being the final Court of Appeal in the land.

This court cannot therefore be called upon to make a declaration which runs contrary to the decision of the Supreme Court. The said first claim is indirectly saying that the inquiry should wait until an Oluwo of Iwo is appointed from Ogunmakinde Ande Ruling House. I have therefore no difficulty in coming to the conclusion that the subject matter of the two suits are the same as rightly found by the learned trial Judge.

In the earlier suit the three appellants in the present suit sued in their personal capacities and in the present suit, they sued for themselves and on behalf of Ogunmakinde Ande Ruling House. Exhibit "D2" is equally a final judgment which is binding on the parties. The defendant - the present respondents were the same respondents in Suit No. HOS/15/82 which terminated in Exhibit "D2".

Though the present appellants sued in their personal capacities in the earlier suit, the subject matter of that action was for the benefit of the entire Ogunmakinde Ande Ruling House. The earlier litigation was over the right of Ogunmakinde Ande Ruling House to succeed to the stool of Oluwo of Iwo Chieftaincy. They (appellants) are equally parties to the present suit. I am satisfied that the appellants are estoppel per rem judicatam from relitigating on the same cause of action which they had lost in Appeal No. SC.98/1986

The claim which gave rise to this appeal to my mind is another attempt by the present appellants to circumvent the decision of the Supreme Court as they tried to do in the case of *Adigun v. The Attorney-General of Oyo State & 17 Ors.* (No.2); (1987) 2 NWLR (Pt. 56) 197 when the appellants in the case applied to the Supreme Court to amend its decision in Appeal No. SC.98/1986 (Exhibit "D2") which was reported in (1987) 1 NWLR (Pt. 53) 678.

I have not the least doubt in my mind that the present appeal is a continuous challenge of that same decision of the Supreme Court - Exhibit "D2". I think it borders on an abuse of process of the Court."

The appellants herein argue in their brief that in the absence of the holder of the office of Oluwo of Iwo, no declaration of the customary law regulating the appointment to the Chieftaincy of Olowu of Iwo could be made since the Oluwo of Iwo is the Chairman of the Chieftaincy Committee of the competent Local Government Council. As all courts are constitutionally bound to give effect to the provisions of the Chiefs Law, Cap. 21, no court, including the Supreme Court, can make an order which will directly or indirectly marginalise the Chieftaincy Committee as regards the making of a declaration of the applicable customary law. It is then submitted that if the order is made it must have been made by mistake or accident. Therefore a plea of *res judicata* which is based on such order, if made in subsequent proceedings, would not be granted. The following cases are cited in the brief in support of the submission - *Henderson v. Henderson* (1843) Hart 100 at p. 115; *Mekhanik Evgrafo* No.2 (1988) 1 Lloyd's Report 330.

It seems to me that this is an oblique attack that the Supreme Court had no power to make the order it made in *Adigun v. The Attorney-General of Oyo State & Ors.* (1987) 1 NWLR (Pt. 53) 678, to the effect that a proper inquiry should be set in motion, as the basis of a new and

proper declaration so that the vacancy of the stool of the Oluwo of Iwo could be filled.

The 1st set of respondents contend that both the trial court and the lower court were right in holding that the appellants' claims were caught by the doctrine of estoppel per rem judicatam. They cited the following B cases in support of their submission - Fadiora v. Gbadebo, (1987) 3 SC. 219 at p. 228 - 221; Odjevwedje & Anor v. Echanokpe, (1978) 3 Sc. 47 at p. 98 - 99; (1987) 1WNLR (Pt. 52) 633; Alashe & Anor. v. Olori Ilu & Ors. (1965) NMLR 66 and Madukolu & Anor. v. Nkemdilig (1962) 1 All NLR 587 at p. 599 (1962) 2 SCNLR 341.

C It is submitted in the brief of the 3rd respondent that the legal effect of the judgment of the Supreme Court in (1987) 1 NWLR (Pt. 53) 678 is that the appellants cannot relitigate the issue so determined by a further action as between the same parties. Reliance is placed on Cardoso, v. Daniel (1986) 2 NWLR (Pt. 20) 1 at p. 16C, 17 B-C and 18H; Fadiora & D Anor v. Gbadebo & Anor (1978) 3 SC. 219 at p. 227 and Ogbelusi v. Fagbolude (1983) 2 SC. 75 at p. 83 - 85.

The brief of the 18th respondent argues that the Order made by the Supreme Court in (1987) 1 NWLR (Pt. 53) 678 is meant to be carried out within the confines of the Chiefs Law and not outside it. It is submitted E that the appellants are estopped from relitigating the reliefs claim in the present case.

The doctrine of estoppel per rem judicatam as that of res judicata is a rule of evidence whereby a party (or his privy) is precluded from disputing in any subsequent proceedings matters which had been adjudicated F upon previously by a competent court between him and his opponent - see Oduka & Ors. v. Kasumu (1968) NMLR 28 at p. 34.

I think it is relevant to quote here the statement of the principle of estoppel, per rem judicatam as contained in the book - res Judicata by Spencer - Bower and Turner, 2nd Edition, Chapter 1, paragraph 9:-

G *"The rule of estoppel by res judicata, which, like that of estoppel by representation, is a rule of evidence, may thus be stated: where a final judicial decision has been pronounced by either an English, or (with certain exceptions) a foreign, judicial tribunal of competent jurisdiction over the parties H to, and the subject matter of, the litigation, any party or privy to such litigation, as against any other party or privy thereto, and, in the case of a decision in rem, any person whatsoever, as against any other person, is estoppel in any subsequent litigation from disputing or questioning such decision on the merits, whether it be used as the foundation of an action,*

or relied upon as a bar to any claim, indictment or complaint, or to any affirmative defence, case, or allegation, if; but not less, the party interest raises the point of estoppel at the proper time and in the proper manner." (Italics mine).

By section 54 of the Evidence Act, Cap. 112 of the Laws of the B Federation of Nigeria, 1990 (which was previously section 53 of the Evidence Act) -

"Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing from the judgment itself to be the ground on C which it was based;

For the section to be successfully pleaded as a defence, the party relying on it has to establish that

- (i) the parties or their privies are the same; and*
- (ii) the facts in issue in both the previous case and the present case D are the same."*

However, because the principle in this law is also the same as the doctrines of equity in the forms of estoppel per rem judicata the courts have extended the elements to be proved, (See the quotation above) for the defence to succeed, That is part from the parties and the facts of the cases E being the same, the party relying on the defence will also have to show that-

- (iii) the subject matter of the claim is the same;
- (iv) the decision relied upon to support the plea of estoppel per rem judicatum or res judicata must be final and F
- (v) the court giving the decision is a competent court.

See *Alashe v. Ilu*, (supra); *Chief Esi v. Chief Secretary to the Federation of Nigeria & Ors.*, (1973) 2 Sc. 189; *Modukolu & Ors. v. Nkemdilim* (supra) and *Board of Custom & Excise v. Kalu*, (1965) All NLR 397; 1965 NSCC 307. G

When a plea of estoppel per rem judicatum is raised, it is the duty of the trial court to examine the judgment relied upon and say whether it decided the issue pleaded. Similarly, it is legitimate for the trial Judge to make such an inquiry in order to determine the fundamental basis of the judgment. - See *Asagba & Anor v. Ogaje & Anor.* (1972) 11 SC. 139 at p. H 156 and *Chief Aseimo & Ors v. Chief Amos & Ors.* (1975) 2 Sc. 57 at p. 67. It is, therefore, a question of fact whether the parties and their privies,

the facts in issue and the subject matter of the claim are the same with those in the current suit. The learned trial Judge in the present case carefully performed this exercise and came to the conclusion that all those elements of *Adigun v. Attorney-General of Oyo State & 18 Ors.*, (1987) 1 NWLR (Pt 53) 678 are the same with those in the present case. The Court of Appeal also found the same and thereby agreed with the findings of the learned trial Judge. Hence concurrent findings of facts have been made. It is trite that in a situation such as this, this Court will not readily interfere with the findings made by the lower courts unless there is some miscarriage of justice or the violation of some principles of law or procedure- See *Omota v. Numa* (1935) 11 NLR 18 and *Stool of Abinabina v. Enyimadu* (1952) 12 WACA 171. The appellants have not attached any of the findings and so they stand undisturbed and section 54 of the Evidence Act, Cap. 112 applies. Similarly, there can be no doubt that the judgment of this Court in *Adigun v. The Attorney-General of Oyo State & 18 Ors.* (1987) 1 NWLR (Pt. 53) 678 is final and that this court was competent to make the decision, as *Adigun v. Attorney-General of Oyo State & 18 Ors.* (No. 2), (1987) 2 NWLR (Pt. 56) 197 so confirmed. Therefore, the plea of estoppel per rem judicatam, as found by the lower courts has been established, the appellants are barred from bringing this action. I think it is apposite here to advert to the remarks of Ibekwe, J.S.C in *Yoye v. Olubode* (1974) 10 SC. 209 at p. 233-224:-

“Res judicata on the other hand, operates not only against the party whom it affects, but also against the jurisdiction of the court itself. The party affected is estopped from bringing a fresh claim before the court. At the same time, the jurisdiction of the court to hear such claim is ousted.

In Odadha v. Okujeni (1973) 11 SC. 343 at p. 353 this court cited with approval, the following illuminating passage from the judgment in the case of *Bassil v. Acqual* (1954) 14 WACA 569 at p. 572-

“Estoppel prohibits a party from proving anything which contradicts his previous acts or declarations to the prejudice of a party, who relying upon them, has altered his position. It shuts the mouth of a party. The plea of res judicata prohibits the Court from enquiring into a matter already adjudicated upon. It ousts the jurisdiction of the Court.”

In *Oduka v. Kasumu* (1967) 1 All NLR 293 the observation of Holroyd Pearce, L.J. In *Morrison Roce and Partners v. Hillman* (1961) 2 A.B. 266 at P. 277 was cited by Coker J.S.C in his lead judgment with approval. The observation reads-

"I can find no ground for creating an artificial exception from the general rule of estoppel per rem judicatam by distinguishing res judicata that follow the issue of a writ from those which precede it. The principles which make the latter desirable have no less application to the former, and should be applied to both alike."

B

It follows, therefore, that the trial court and by extension the court of Appeal as well as this Court have no jurisdiction to adjudicate on the claims brought by the appellants in the present case. Consequently this knocks the bottom off this appeal. I need only to point out that the substitution of the former 1st and 2nd respondent i.e Military Governor of Oyo State and the Attorney-General of Oyo State with the current 1st and 2nd respondents respectively, which was granted by this Court on 20th September, 1993, has not and cannot affect the decision which I have reached because the latter are the respective successors of the former in office. The 18th respondent was joined according to the appellants brief of argument on the ground that "if the decision of the Court of Appeal affirming the High Court decision which dismissed the appellants' claims, is overturned or set aside, the irresistible follow up is on the propriety of the appointment of Ashiru Olatunbosun Tadeso, hence his joinder as 18th respondent." There is no claim against him in the suit in the High Court. He is not, therefore, a party in the action. His presence in the case in this Court could not have affected the plea of estoppel per rem judicatam in the High Court. His name is hereby struck out from the appeal.

C

D

E

The result is that the High court had no jurisdiction to entertain the appellants' claims. Their (appellants') action was, therefore, incompetent and it is hereby struck out. All the other issues raised for determination in this appeal become academic. I need not take them into consideration.

F

This case has clearly illustrated the futility of challenging the decision of this Court, as the apex court in the hierarchy of our court system. Apart from the provisions of section 54 of the Evidence Act, Cap. 112 and the principle of estoppel per rem judicatam. Section 215 of the 1979 Constitution, Cap. 62 of the Laws of the Federation of Nigeria, 1990 provides

G

"215. Without prejudice to the powers of the President or the Governor of a State with respect to prerogative of mercy no appeal shall lie to any other body or person from any determination of the Supreme Court."

H

The powers of the President and the Governors of the States referred to in the section are limited to criminal proceedings only (see Sections 161 and 192 of the 1979 Constitution). The finality of the decisions of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation. The justices that man the Court are of course fallible but their judgments are, as the Constitution intends, infallible. Therefore any ingenious attempt by counsel to set aside or circumvent the decision of the Supreme Court will be met with stiff resistance. That is indeed the point which has been brought out by the twists and turns, in this case.

The appeal, therefore, fails and it is hereby dismissed with N1,000.00 costs, in favour of each set of respondents, against the appellants.

BELGORE JSC

There must be an end to litigation. Once a matter has been decided between the parties or their privies and the subject matter is the same and there is no appeal against that decision, it becomes *res judicata* and a party should not be allowed to re-open the matter again. When such a decision has been further tested on appeal and all remedies available to aggrieved party have been exhausted, it may amount to abuse of court's process to start all over again as if to test if there would be a slip in Court's constant vigilance. This matter has been fully decided upon and what the appellants now, want re-opened is surely *res judicata*. The two Courts below were perfectly right to hold that they could not exercise jurisdiction again over the matter. I agree.

Finally, I find this matter to be a classical example of frivolous and vexatious litigation. After the case travelled all the way to this Court, an attempt was made to get this Court to change its decision under the cloak of employment of "inherent jurisdiction". Obaseki, J.S.C. set out clearly in concluding, the possible consequence of acceding to such illegality as setting ourselves aside. Undeterred, the appellants -initiated new proceedings on the same matter just as a gambler would do.

With the fuller reasons set out in the judgment of my learned brother, Uwais. J.S.C. I also find no merit in this appeal and I dismiss it with the same consequential orders.

WALI JSC

I have read in advance the lead judgment of my learned brother, Uwais. J.S.C. and I entirely agree with his reasoning and conclusion. I hereby adopt them as mine.

There is no doubt that in this protracted litigation the main issue B involved is whether from the pleadings and the evidence, the issue of estoppel does not apply to estop the appellants' present action. My answer is certainly in the affirmative. When the 1979 declaration was made, approved and registered, the appellants were declared as the only Ruling House. This declaration was challenged and another declaration was made in 1981 C in which the claim of the appellants and as supported by the 1989 Customary Law declaration that the only Ruling House was replaced. In the (1981) declaration the following three Ruling Houses were identified and recommended:-

1. Adagunodo
2. Gbaase
3. Alawusa

D

The appellants then fled a suit in the High Court of Oyo State challenging the declaration. Both the High Court and the Court of Appeal dismissed the appellant's case. But on appeal to this court, Obaseki, J.S.C. delivering its unanimous judgment allowed the appeal in part and ordered as follows:-

"1. Claim 1 be dismissed; Ogunmakinde Ande has not been proved to be the only Ruling House of Oluwo of Iwo from which Oluwo of Iwo is appointed under the customary law of Iwo.

2. Claims 2 and 3 are granted. Therefore the Declaration of customary law regulating the appointment of Oluwo of Iwo contained in Exhibit K is hereby declared null and void. A proper inquiry to be the basis of a new and proper Declaration should be set in motion so that the stool vacancy can be filled G with a minimum delay."

Pursuant to the orders of Supreme Court in its judgment quoted above, the Oyo State Government set up another panel to enquire and make recommendations on the relevant and applicable customary law on the issue. The panel had completed its assignment and submitted its report upon which the Government had issued a White Paper when the appellants instituted another action asking for the following reliefs:-

"(i) A declaration that' in the absence of an Oluwo of Iwo no new Declara-

tion of custom relating to succession of Oluwo Chieftaincy can be made.

(ii) Declaration that until a new declaration regulating the succession to the Oluwo of Iwo Chieftaincy has been made, the Ogunmakinde Ande Ruling House in accordance with the customary Law applying to that Chieftaincy

B is the only ruling house to present a candidate for the Oluwo of Iwo.

(iii) Declaration that the right of Ogunmakinde Ande to present a candidate for the vacant stool of Oluwo of Iwo had accrued since the judgment of the Supreme Court on 20th March 1987 which invalidated both the declaration on 4th January 1979 and that of 28th July 1981.

C (iv) Declaration that any action of the defendants jointly and severally that takes or purports to take away the accrued rights of Ogunmakinde Ande Ruling House is unconstitutional being retroactive in effect.

D (v) Injunction restraining the defendants from taking any steps whatsoever which may directly or indirectly affect the accrued rights of the plaintiffs and or appointing or causing an appointment of a candidate or candidates from any family other than the Ogunmakinde Ruling House.

E (vi) Declaration that after the judgment of the Supreme Court, Ogunmakinde Ande automatically became the only ruling House with accrued right to present a candidate for the Oluwo of Iwo Chieftaincy. “

In a well considered judgment of the learned trial Judge, he found that the issue raised in the pleadings, that is, whether Ogunmakinde Ande F is the only Ruling House entitled to succeed to the vacant stool of Oluwo of Iwo has been decided against the appellant in a previous case. The learned Judge said:-

G “In my view it is the same claim 1 of Exhibit “D2” which had been dismissed by the Supreme Court, that the plaintiffs have cleverly split into six claims in this suit. Therefore as claims (i) - (iv) are basically the same as Claim I already dismissed by the Supreme Court in Exhibit ‘D2,’ it well amount to allowing the plaintiff to “have a second bite at the cherry” if their claims in this suit are entertained by this Court.”

H In dismissing the appellants’ appeal and affirming the judgment of the High Court, the Court of Appeal concluded as follows on the issue of res judicata:-

“Though the present appellants sued in, their personal capacities in the

earlier suit, the subject matter of that action was for the benefit of the entire Ogunmakinde Ande Ruling House. The earlier litigation was over the right of Ogunmakinde Ande Ruling House as the only Ruling House to succeed to the stool of Oluwo of Iwo Chieftaincy. They (appellants) are equally parties to the present suit. B

I am satisfied that the appellants are estoppel per rem judicatam from relitigating on the same cause of action which they had lost in Appeal No. SC.98/1986."

The rule of res judicata will apply when the following conditions are satisfied:- C

1. The parties or their privies are the same;
2. The facts in issue in both the previous litigation and the present one are the same;
3. The decision relied upon to support the estoppel per rem judicatam must be final; and , D
4. The court giving the decision has jurisdiction to do so.

See Madukolu & Ors, v. Nkemdilim (1962) 1 All NLR 587 (1962) 2 SCNLR 341.

These conditions have been satisfied in this case and the rule applies. E

I cannot see any ambiguity in the judgment of this court in SC.98/1986 calling for any interpretation or clarification by this court again.

The present action by the appellants is not only a glaring abuse of the process of the court but borders on the contempt of this court's judgment in Sc. 98/1986. Orders made by final court must be respected and obeyed by parties to litigations. F

For these reasons and the comprehensive reasons contained in the lead judgment of my learned brother, Uwais J.S.C., I also hereby dismiss this appeal. I abide by the consequential orders contained in the lead judgment, including that of costs. G

KUTIGI JSC

I have had the opportunity of reading before now the judgment just delivered by my learned brother Uwais, J.S.C. and with which I agree. H
I will also dismiss the appeal with costs as assessed.

OGUNDARE JSC

I am in full agreement with the judgment of my learned brother, Uwais J.S.C. just delivered. I associate myself with his reasoning and conclusion that *res judicata* applies to oust the jurisdiction of the trial High Court as that Court rightly found and as the court below also rightly affirmed that finding. I, however, want to add a few words of my own on the issue of *res judicata* raised in this appeal.

The facts have been fully set out in the judgment of my learned brother; I need not go over them again. For a plea of *res judicata* to succeed, it must be shown that-

1. The parties or their privies in both cases are the same;
2. the cause of action in the two actions is the same;
3. the subject matter of the claim in each action is the same;
- D 4. the decision relied upon in the previous action is final; and
5. the court giving the decision had competence to do so.

As regards (1) above, although it would appear from the caption of the earlier case - HOS/15/82 which ended in this Court as Sc. 98/86 that the Plaintiffs therein (who are also Plaintiffs in the present proceedings) sued in their personal capacities, whereas they now sue in representative capacity but whatever doubt there might be as to the capacity in which they sued in that earlier case was put to rest by the evidence in the present proceedings of the 1st witness for the plaintiffs Tihamiyu Ajani who under cross examination deposed thus:

F *"I could remember that in 1982 the members of Ogunmakinde Ande Ruling House of the Oluwo of Iwo Chieftaincy instituted an action in this same Court in respect of the Oluwo Iwo of Iwo Chieftaincy. I was one of the members of Ogunmakinde Ande Ruling House who instituted the said action. I also admit that we fought the said action from this Court to the*
 G *Supreme Court of Nigeria"*

The two lower courts were therefore right in finding that the parties in HOS/15/82 are the same as the parties in the present proceedings.

In the earlier action the plaintiffs sought among other claims, a declaration that "by the customary law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which appointment to Oluwo of Iwo Chieftaincy is to be made". In the present proceedings their six claims revolve around claim (2) which reads:

"Declaration that until a new Declaration regulating succession to Oluwo of Iwo Chieftaincy has been made, the Ogunmakinde Ande Ruling

House in accordance with the Customary Law applying to that Chieftaincy is the only Ruling House to present a candidate for the Oluwo of Iwo."

(Italics mine).

There can be no doubt that the cause of action in the two cases is the same, that is, that by the customary law of Iwo, the Ogunmakinde Ande Ruling House is the only ruling house entitled to present candidate to fill a vacancy in the Oluwo chieftaincy. B

The subject matter in the two cases is, of course, the Oluwo of Iwo chieftaincy. There is no dispute about this.

It is not in dispute also that the decision of this Court in the earlier action put a finality to that action. Nor is it disputed that the trial High Court in that action lacked jurisdiction to adjudicate on the dispute brought before it by the plaintiffs. It is also not disputed that both the Court of Appeal and this Court has appellate jurisdiction in the matter. This Court in the principal judgment of Obaseki J .S.C. with whom all the other six justices that sat on the appeal agreed, concluded: C

"The appeal succeeds on the dismissal of claim No.2 but fails in respect of the dismissal of claims 1. It is desirable that the appellants, i.e. Ogunmakinde Ande Ruling House along with others be heard in an inquiry to ascertain the relevant customary law. The decision of the Court of Appeal is hereby set aside and in its stead, I hereby order that D

1. Claim 1 be dismissed, Ogunmakinde Ande has not been proved to be the only Ruling House at Iwo from which Oluwo of Iwo is appointed under the customary law of Iwo; E

2. Claims 2 and 3 be granted.

Therefore, the Declaration of the Customary law of Iwo regulating the appointment of Oluwo of Iwo contained in Exhibit K is hereby declared null and void. F

A proper inquiry to be the basis of a new and proper declaration should be set in motion so that the stool vacancy can be filled with a minimum of delay." G

I would think that the above decision of this Court is clear and unambiguous. This Court rejected the claim that there was in Iwo a customary law whereby the Ogunmakinde Ande Ruling House was the only ruling house entitled to present a candidate to fill any vacancy in the Oluwo chieftaincy. This Court then ordered that a proper inquiry be set in motion to provide the basis for a new and proper chieftaincy declaration for the filling of the Oluwo chieftaincy. H

It is argued in the appellants' Brief thus:

"It is submitted that when the Supreme Court directed 'a proper inquiry' as a basis of a new and proper declaration for the Oluwo of Iwo Chieftaincy

title it was saying that the inquiry and the declaration must be done in the correct or right way. The Chiefs Law has laid down, the processes for the making of a declaration stating the procedure or law which regulates the selection of a person to be the holder of a recognised Chieftaincy title like the one in this case. See Sections 4 - 10 of the Chiefs Law. It is, no doubt, in recognition of Section 4 of the Chiefs Law, that the Supreme Court said in Adigun A.G. Oyo State SC.96/986 as follows:

'It is clear from the Chiefs Law that the Court cannot assume the functions of the Chieftaincy Committee as regards the making of declarations of customary law governing the selection and appointment of traditional chiefs. See: page 702 paragraph of (1987) 1 NWLR (Pt. 53) containing the report of the case.

The same Court which made this categorical statement cannot. It is submitted, by thought to have intended by a directive, in another passage from the same judgment, a new declaration touching succession to the Oluwo of Iwo Chieftaincy outside the confines of the Chiefs Law and without the Chieftaincy Committee being a party to the declaration. It is submitted that both the law and the true and proper construction of the Supreme Court directive lean against anything to the contrary."

The above argument, in my respectful view, evinces a complete misconception (deliberate or otherwise) of the order of this Court which is very clear and unambiguous. That all the parties well understood the order made by this Court in SC. 98/1986 is confirmed by the following paragraphs of the Statement of Claim.

"23 Although the Supreme Court found in favour of the plaintiffs, it also invalidated both the said Declaration of 28th July, 1981 made consequent upon the Agiri Report, as well as the said Declaration made on the 4th January, 1979.

24. The Supreme Court then went onto make the following consequential order namely;

'There shall be no filling of the Oluwo of Iwo Chieftaincy until there has been a proper enquiry set up by the Government of Oyo State which enquiry shall invite all parties to the controversy including the Alawusa, Adagunodo, Gbase and Ogunmakinde Ande Ruling House to the enquiry, take evidence, both oral and documentary from them if they do decide to present any, and upon which enquiry a declaration as to the Customary law regulating the selection to the Olowu of Iwo Chieftaincy shall be made and upon which declaration the Kingmakers shall be called upon to select the Oluwo of Iwo.' (Per Eso, J.S.C.).

25. Consequently, the Oyo State Government empanelled Prof. Mrs. Bolanle Awe's Administrative Inquiry to the Oluwo of Iwo Chieftaincy.

26. The said Administrative Inquiry was held from August to December, 1987 and to the best of my knowledge, information and belief a Report B was submitted to the Oyo State Government on 23rd December, 1987." and the evidence of the 2nd plaintiff, Prince Alade Lamuye when, under cross-examination he deposed -

"I admit that after the said judgment of the Supreme Court the Oyo State Government set up an administrative inquiry into the Oluwo of C Iwo Chieftaincy for the purpose of making a new Declaration for the Chief-taincy. It is also true that the members of Ogunmakinde Ande submitted memoranda and gave oral evidence at the said administrative inquiry."

There is also the evidence of the only witness for the defence, Joshua Adeagbo Ila Ladewa, the Deputy Secretary to Iwo Local Govern- D ment who, under cross examination, testified as follows:

"It is true that, as contained at the penultimate paragraph of p. 32 of Exhibit 'D' the Supreme Court ordered as follows:

A proper inquiry to be the basis of a new and proper stool vacancy can be filed with a minimum of delay. E

In compliance with the said Order of the Supreme Court, the Oyo State Government set up an Inquiry under the Chairmanship of Professor (Mrs.) Bolanle Awe. The said Panel completed its enquiry and submitted its Re- report to the Oyo State Government in December, 1987. The Oyo State Government after the receipt of the said Report issued a White Paper on F the said Report in February, 1988."

One might have thought that with the conclusion of the Professor Bolanle Awe Inquiry and the consequent Government White Paper on its reports (the propriety of either of which is not being challenged in these proceedings), litigation might have ended there. But no. The plaintiffs, rather G than wait for a new and proper Oluwo Chieftaincy Declaration to be made, within the provisions of the Chiefs Law, on the basis of the Bolanle Awe Report as ordered by this Court in SC.98/1996 resorted once again to litigation. They initiated the present proceedings contending once again that H there is a customary law in Iwo whereby their Ruling house is the only ruling house to present a candidate to fill the vacancy in the Oluwo Chieftaincy and, in the absence of a declaration to the contrary, they should be called upon to fill the vacancy then existing. This Court in SC.98/1986 debunked the existence of such a customary law. It appears the plaintiffs will not be

deterred by the judgment of any court, and most importantly of this Court unless and until they have it their way. But the maxim is: Nemo dehet his vexari pro una et eadem causam. Again res judicata pro veritate accipitur. And yet again, interest rei publicae ut sit finis litium.

B All the elements of a successful plea of res judicata having been established, the two courts below rightly, in my view, struck out plaintiffs' claims. I too strike them out. In view of this conclusion the other issues canvassed in this appeal have become academic. This Court, like the two courts below, will have no jurisdiction to consider those issues.

C Accordingly, I too dismiss this appeal with costs as assessed in the lead judgment of my learned brother, Uwais, J.S.C.

D **ADIO JSC**

I have had the opportunity of reading in advance the judgment just read by my learned brother, Uwais. J.S.C. and I am entirely in agreement with his reasoning and conclusion that this appeal fails. Accordingly, E I too dismiss the appeal and abide by the order for costs.

I however, wish to comment by way of emphasis. This is another appeal in which Inter alia, the question whether Ogunmakinde Ande Ruling House is the only ruling house at Iwo from which the Oluwo of Iwo should be appointed under the customary law of Iwo, will come up for determination in this court. The determination by this court. The determination by F this court of an issue involved in a previous one, Suit No SC.98/1986 reported in (1987) 1 NWLR (Pt. 53) 678 is one of the issues in the present appeal. It is indeed the crucial issue. This court in the aforesaid previous suit per Obaseki. J.S.C. stated inter alia, as follows:-

G *"The appeal succeeds on the dismissal of claim No. (2) but fails in respect of the dismissal of claims (1) (sic). It is desirable that the appellants. i.e. Ogunmakinde Ande Ruling House along with others be heard in an inquiry to ascertain with relevant customary law. The decision of the Court of H appeal is hereby set aside and in its stead. I hereby order that -*

(1) Claim 1 be dismissed, Ogunmakinde Ande has not been proved to be the only Ruling House at Iwo from which Oluwo of Iwo is appointed under the customary law of Iwo.

(2) Claims 2 and 3 be granted.

Therefore, the Declaration of the customary law of Iwo regulating the appointment of Oluwo of Iwo contained in Exhibit K is hereby declared null and void.

A proper inquiry to be the basis of a new and proper declaration should be set in motion so that the stool vacancy can be filled with a minimum of delay.

The appellants are entitled to costs assessed at N300.00"

My learned Brother, Uwais J.S.C. has in the lead judgment fully summarized the facts of this case and he has set out the various items of the appellants' claim. The determination underlined by me in paragraph (1) of the order of this court in Suit No. SC.98/1986 quoted above was that Ogunmakinde Ande had not been proved to be the only ruling house at Iwo from which Oluwo of Iwo was to be appointed under the customary law of Iwo. The question which arose when this case came up for hearing before the learned trial judge was whether the issue, which had been determined by this court as shown by paragraph (1) of the order made in Suit. No. Sc. 98/1986 quoted above, could again be made subject of litigation in another subsequent suit between the same parties as it was done in this case by the appellants. The first and the second sets of respondents averred in their statements of defence that this suit instituted by the appellants was barred by estoppel per res judicata. The learned trial judge ruled in favour of the respondents and the court below affirmed the ruling.

Dissatisfied with the judgment of the court below, the appellants have lodged a further appeal to this court. Parties duly filed and exchanged briefs. The issues identified for determination in the briefs of the parties have been set out in the lead judgment of my learned brother. One of the submissions made for the appellants in the appellants' brief was that as all courts were constitutionally bound to give effect to the provisions of the Chiefs Law, Cap. 21, no court including the Supreme Court, could make an order that would directly or indirectly marginalise the chieftaincy committee as regards the making of a declaration of the applicable customary law. It was also submitted that if the order was made, it must have been made by mistake or accident. For that reason, a plea res judicata which was based on such order, if made in subsequent proceedings would not be granted. The suggestion here is that this court had no power to make the order it made in Suit No. 98/1986, quoted above, as it was, in the view of the appellants, not the business of this court to get itself involved in matters pertaining to the making of a chieftaincy declaration which was the function of the chieftaincy com

mittee. The foregoing submissions made for the appellants in relation to the power of this court to make the order in question were misconceived. The order aforesaid made by this court was not calculated or intended to usurp the functions of the chieftaincy committee in relation to the making of a chieftaincy declaration, which was consistent with the principle that it is not the business of the court to make declarations on the customary law relating to the selection of chiefs under the Chiefs Law. See *Adigun & Ors. v. Attorney-General, Oyo State*, supra; *Eguamwense v. Amaghizemwen*, (1993) 9 NWLR (Pt. 315) 1 at p. 41; and *Ajakaiye v. Idehai* (1994) 8 NWLR (Pt. 364) 504. What this court did in *Adigun's* case, supra, was to set out its own determination that *Ogunmakinde Ande* had not been proved to be the only ruling house at Iwo from which *Oluwo of Iwo* was to be appointed under the customary law of Iwo. The then existing chieftaincy declaration relating to the *Oluwo of Iwo* chieftaincy was declared by this court to be null and void. This court then directed that a proper inquiry to be the basis of a new proper declaration should be set in motion so that the vacancy in the said chieftaincy might be filled with minimum delay, and expressed the view that it was desirable that the appellants, that is, the *Ogunmakinde* ruling house along with others should be heard in the inquiry to ascertain the relevant customary law.

In *Adigun's* case, supra, Suit No. 98/1986, one of the declarations sought was a declaration that (under) the customary law prevailing in Iwo, the *Ogunmakinde Ande* ruling house was the only ruling house from which appointment to the *Oluwo of Iwo* chieftaincy was to be made. The determination of the question by this court stated in paragraph (1) of this court's order quoted above and underlined by me was in response to the aforesaid claim. It was not an issue raised by this court on its own and determined without giving an opportunity of being heard to the parties. The view or determination of this court stated in para (1) of the order in response to the issue raised or claim made by the appellants, the direction that an inquiry should be held to ascertain the customary law of Iwo regulating the appointment of an *Oluwo of Iwo*, and the expression of the view that the *Ogunmakinde Ande Ruling House* and others should be given an opportunity of being heard at such an inquiry, cannot be reasonably said to be a marginalisation of the Chieftaincy committee or the usurpation of the functions of the chieftaincy committee.

The learned trial Judge was, therefore, right in ruling in favour of the respondents that this present suit was barred by estoppel per rem

judicatum and the Court of Appeal was right in affirming the ruling. It should be remembered that the judgment of this court in which the determination which barred the present suit was made, was a final decision in the sense that under section 215 of the Constitution, there can be no appeal against it as this court is the highest court in this country except that in criminal cases aggrieved parties may petition the appropriate authority B for the exercise of prerogative of mercy and the appropriate authority may intervene by means of legislation if it considers such an extraordinary measure necessary. The legal implication of the aforesaid determination in Suit No. 98/1986 is very fundamental. For ever and ever or for as long as the judgment in Suit No. 98/1986 subsists as the case may be, in whatever C form or way it is framed, any claim by the Ogunmakeinde Ande ruling house or by anyone or more of its members seeking or designed to establish that by or under the customary law of Iwo, Ogunmakeinde Ande ruling house is the only ruling house entitled to present a candidate to fill a vacancy in the Oluwo of Iwo chieftaincy cannot succeed because the aforesaid issue had D been determined in the manner set out in paragraph (1) of the order of this court, quoted in Adigun' s case, supra.

It is for the foregoing reasons and the fuller reasons given in the lead judgment by my learned brother, Uwais, J.S.C. that I agree that the appeal be dismissed. I too dismiss it and abide by the order for costs. E

IGUH JSC

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother, Uwais, J.S.C.

I agree entirely with him that this appeal is devoid of merit and F ought to be dismissed.

The appeal is in respect of a chieftaincy matter instituted by the appellants as plaintiffs in the trial court against the defendants/respondents after the judgment of this court delivered on the 20th March, 1987 had dismissed their claim for declaration that their Ogunmakeinde Ande Ruling G House is the only house from which appointments to the Oluwo of Iwo Chieftaincy may be made.

It is clear from the various matters raised by learned counsel for the parties that the main issue for determination in this appeal is whether the reliefs claimed by the appellants in this suit are caught by the doctrine H of estoppel per remjudicatum and issue estoppel. In other words, are the appellants estoppel from relitigating or claiming the reliefs sought in the

present suit against the defendants.

In suit No. HOS/15/82, the plaintiffs at the High Court of Justice, Osogbo claimed against all the defendants with the exception of the 1st defendant who is the Military Governor of Oyo State as follows:-

- B “(i) A declaration that by the Customary Law prevailing in Iwo, the Ogunmakinde Ande Ruling House is the only Ruling House from which appointment to the Oluwo of Iwo Chieftaincy is to be made.
(ii) A declaration that the instrument dated the 28th day of July, 1981 is in so far as it purports to declare the Customary Law prevailing in Iwo with respect to the appointment to the Oluwo of Iwo Chieftaincy, is wrong and
C accordingly illegal and void and
(iii) An injunction restraining all servants, officers and agents of the Government of Oyo State from acting pursuant to or taking any steps to implement the aforesaid declaration registered on 29th July, 1981.”

D The trial court on the 16th June, 1982 dismissed their claims whereupon they lodged an appeal against this judgment to the Court of Appeal. The Court of appeal dismissed their appeal and affirmed the Judgment of Oloko, J. as a result of which they further appealed to this court.

E This court allowed their appeal in respect of claims (ii) and (iii) but dismissed the same in respect of claim (i) See Adigun and 2 others v. The Attorney-General of Oyo State and 18 others (1987) 1 NWLR (Pt. 53) 678. Obaseki, J.S.C. in his lead judgment in the appeal declared as follows:-

F “It is desirable that the appellants, i.e. Ogunmakinde Ande Ruling House along with others be heard in an inquiry to ascertain the relevant Customary Law. The decision of the Court of Appeal is hereby set aside and in its stead, I hereby order that:

- G (1) Claim 1 be dismissed; Ogunmakinde Ande has not been proved to be the only Ruling House at Iwo, from which Oluwo of Iwo is appointed under the Customary Law of Iwo;
(2) Claims 2 and 3 be granted..... A proper inquiry to be the basis of a new and proper declaration should be set in motion so that the vacancy can be filled with a minimum of delay.”

(Italics supplied for emphasis)

H Pursuant to the above Supreme Court Judgment, the Panel set up by Government of Oyo State for the formulation of new and proper Declaration for the filling of the Chieftaincy vacancy concluded its assignment and submitted its recommendations and report. Government issues its White Paper thereupon following which the appellants took the present action on the 22nd February, 1988 claiming as follows -

“(i) Declaration that in the absence of an Oluwo of Iwo, no new declaration of Custom regulating the succession of the Oluwo Chieftaincy can be made.

(ii) Declaration that until a new Declaration regulating succession to the Oluwo of Iwo Chieftaincy has been made, the Ogunmakinde Ande Ruling House in accordance with the Customary Law applying to that Chieftaincy is the only Ruling House to present a candidate for the Oluwo of Iwo. B

(iii) Declaration that the right of Ogunmakinde Ande to present a candidate for the vacant stool of Oluwo of Iwo had accrued since the judgment of the Supreme Court on 20th March, 1987, which invalidated both the declaration on (sic) 4th January, 1979 and that of 28th July, 1981. C

(iv) Declaration that any action of the Defendants jointly or severally that takes or purports to take away the accrued right of Ogunmakinde Ande Ruling House is unconstitutional being retroactive in effect. D

(v) Injunction restraining the Defendants jointly or severally by their officers, servants and or agents and howsoever from taking any step whatsoever which may directly or indirectly affect the accrued right of the plaintiffs and or from appointing or causing an appointment of a candidate or candidates from any family other than the Ogunmakinde Ande Ruling House. E

(vi) Declaration that after the judgment of the Supreme Court in the Suit No. SC.98/1986 of 20th March, 1987 nullifying the registered declaration of 4th January, 1979 and 28th July, 1981 the Ogunmakinde Ande Ruling House automatically became the only Ruling House in accordance with the Customary Law apply to the Oluwo of Iwo Chieftaincy with accrued right to present a candidate for the Oluwo of Iwo Chieftaincy.” F

Those claims were dismissed by the trial court which was affirmed by the Court of Appeal. The appellants have now further appealed to this court. G

As I have indicated, the main issue that calls for determination in this appeal is whether or not the plaintiffs' claims are caught by the doctrine of estoppel per rem juditam and issue estoppel. For this doctrine to apply in civil cases, however, the res (the identity of the subject matter) in dispute, the issue for determination and the parties or privies must be the same in the new action as in the earlier proceedings. See *Yoye v. Olubode and others* (1974) 1 All NLR (Pt. 2) 118 at 122, *Idowu Alashe and others v. Sanya Olori Ilu* (1965) NMLR 66 etc. In this regard the trial court on the H

issue of whether the parties in both actions are the same found as follows -

"Parties - It is crystal clear both from the pleadings filed in this Suit and the evidence led thereon particularly, the evidence of the 2nd plaintiff that of the plaintiffs' witness, Tiamiyu Ajani and that of the Defendants' Witness, Mr. Joshua Adeagbo Ile Ladewa and also from the plaintiffs' amended Statement of Claim in Suit HOS/15/82 tendered as Exhibit 'D1' that the parties in this Suit are the same as the parties in the earlier Suit, that is Exhibit 'D2' and I accordingly so hold,"

On the "res" or the subject matter in contention between the parties, the trial Court had this to say.

'Res- From the plaintiffs' amended Statement of Claim filed in HOS/15/82 tendered as Exhibit 'D1' particularly the relevant paragraphs thereof and the three claims contained therein, which shall be hereinafter reproduced for ease of reference; the judgment of the Supreme Court in Exhibit 'D2' and the evidence adduced in these proceedings, it is very clear and beyond dispute that the res, that is the subject-matter in contention in HOS/15/82 which went on appeal and terminated in the Supreme Court in Appeal No. SC.98/1986, that is Exhibit 'D2' was the Oluwo of Iwo Chieftaincy. It is also clear both from the pleadings filed in this Suit and the evidence led thereon that the res that is the subject matter in contention between the parties in this Suit, is again the Oluwo of Iwo Chieftaincy. I therefore hold that the Res in this Suit and the Res in the previous Suit, that is Exhibit 'D2' are the same."

Dealing with the issue in both cases, the trial court observed -

"On a careful study of the pleadings filed in the present Suit and on a meticulous examination of the evidence led thereon by the 2nd plaintiff and his Witness, Tiamiyu Ajani, it has become glaring obvious to me that the issue which also calls for determination in considering the plaintiff Relief contained not only in plaintiffs'.

Claims (ii) - (vi) but also in their Claim 1 in this Suit is the same issue, namely:

Whether the plaintiffs' family, that is Ogunmakinde Ande, is the only Ruling House in Iwo entitled to the Oluwo Chieftaincy which issue had been previously raised by these same plaintiffs in HOS/15/82 (Exhibit'D1') and, finally determined by the Supreme Court in Exhibit 'D2'. I therefore hold that the issue raised on the pleadings for determination in this present Suit is the same issue which had been finally determined by the Supreme Court in Exhibit "D2". In my view, it is the same Claim 1 of Exhibit 'D2' which had been dismissed by the Supreme Court, that the plaintiffs have cleverly - split into Six Claims in this Suit. Therefore as Claims (i) - (vi), are basically the same Claim 1 already dismissed by the Supreme Court in

Exhibit D2', it will amount to allowing the plaintiffs to "have a second bite at the cherry" if their Claims in this Suit are entertained by this Court: See (1) Albert Adeoye v. Madam Jinadu (1975) 5 Sc. p. 43 at p. 47: (2) Savage & Ors. V. Uwechia (1972) 1 All NLR (Pt. 1). 251 at p. 257-260 and (3) Madukolu v. Nkenulilim (1962) 1 All NLR p. 581 at p. 593 (1962) 2 SCNLR 341

For all the foregoing reasons I hold that all the Relief claimed by the plaintiffs in this Suit have been caught by the doctrines estoppel per rem judicatam" and for that reason the plaintiffs are estoppel from re-litigating and claiming the Relief sought in this Suit against the Defendants."

The Court of Appeal, for its own part, after a careful consideration of the issue affirmed the findings of the trial court and concluded as follows -

"I am satisfied that the appellants are estopped per rem Judicatam from relitigating on the same cause of action which they had lost in Appeal No. SC.98/1986. (See Exhibit 'D2'). In the words of Aniagolu, J.S.C. in Ogbesusi v. Fabolude (19H3) 2 Sc. 75 at 83-85.

"Public policy demands that there should be an end to litigation once a court of competent jurisdiction has settled by a final decision, the matter in contention between the parties. Not only must Court not encourage prolongation of dispute, it must discourage proliferation of litigation and so the maxim interest republica ut sit finis litium has for long been accepted as one of the established principles of our law."

The claim which gave rise to this appeal to my mind is another attempt by the present appellants to circumvent the decision of the Supreme Court as they tried to do in the case of Adigun v. The Attorney -General of Oyo State & 17 ors. (No.2) (1987) 2 NWLR (Pt. 56) 197 when the appellants in the case applied to the Supreme Court to amend its decision in appeal No. SC.98/1986 (Exhibit 'D2') which was reported in (1987) 1 NWLR (Pt. 53) 678. The Supreme Court in Adigun v. A.G. of Oyo State & 17 Ors. (No.2) refused to review its earlier decision contained in Exhibit "D2". I have not the least doubt in my mind that the present appeal is a continuous challenge of that same decision of the Supreme Court -Exhibit "D2". I think it borders on an abuse of process of the court."

There is ample evidence in support of the above concurrent findings of both the trial court and the court below and I agree entirely that the doctrine of estoppel per rem judicatam applies in this case to oust the jurisdiction of the trial court as the learned trial Judge rightly found and as affirmed by the Court of Appeal.

I need hardly add that the appellants' claims having been predicated on the very issue which this court had dismissed in very clear terms

on the ground that Ogunmakinde Ande Ruling House had not been proved to be the only ruling House of Oluwo of Iwo from which a candidate is to be appointed. The present action appears to me totally misconceived and an abuse of the process of the court and was properly dismissed by the two courts below. The appellants seem to me impervious to all judicial reasoning and have by all manner of devices persisted and have continued to challenge the clear decision of this court in Adigun and 2 others v. The Attorney-General of Oyo State & 18 Ors supra. See too Adigun & 2 Ors v. Attorney-General of Oyo State & 18 Ors (No.2) (1987) 2 NWLR (Pt. 56) 197. These devices which are clearly despicable and certainly not in the best interest of justice ought now to be put an end to otherwise the appellants would deliberately be questioning the final judgment of the highest court of the land and may unwittingly be hovering around the precinct of contempt of this court.

It is for the above and the more elaborate reasons contained in the lead judgment of my learned brother. Uwais, J.S.C. that I too dismiss this appeal as most unmeritorious, vexatious and entirely without substance. I endorse the order as to costs made in the lead judgment.

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